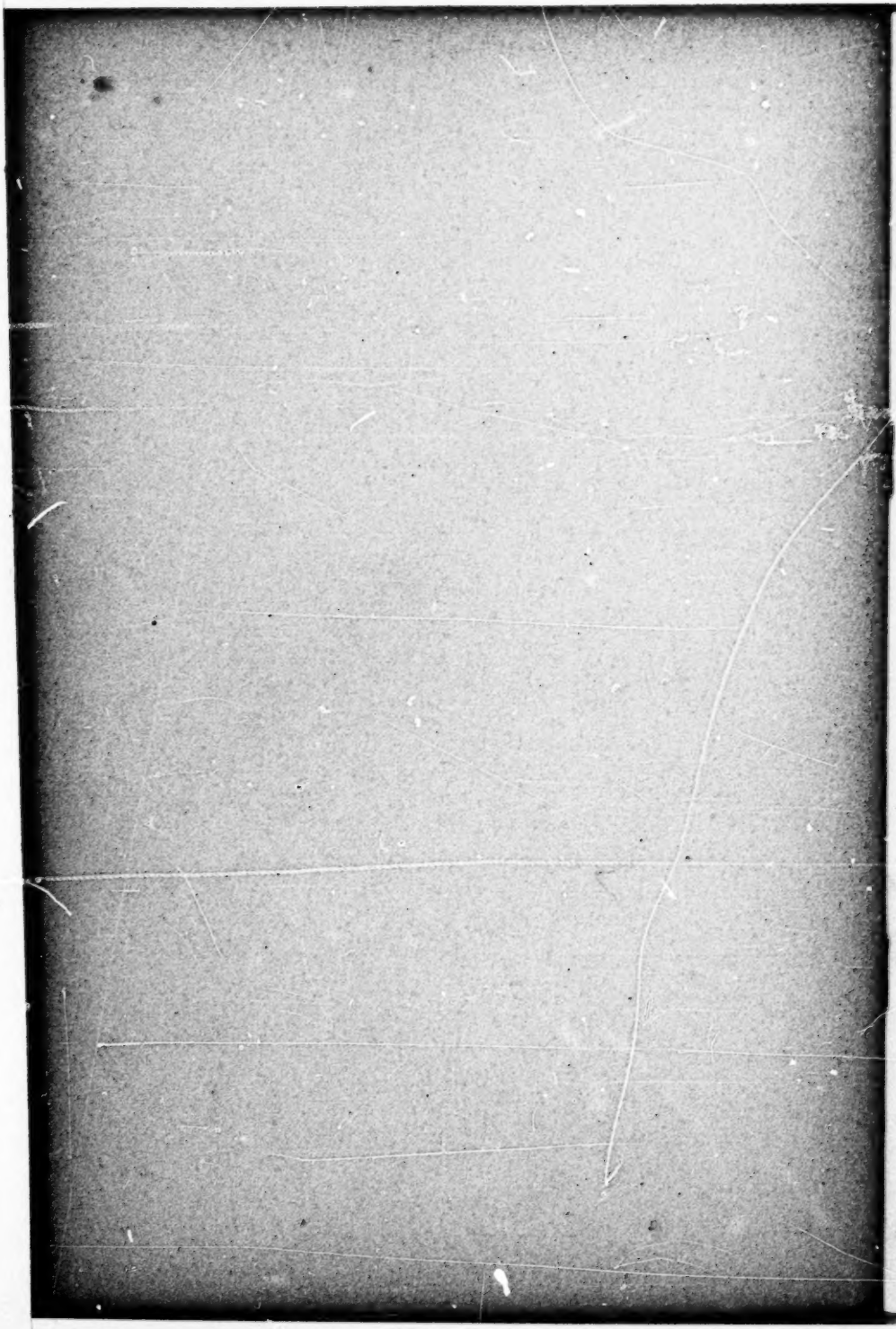

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAR 7
MICHAEL RODAK, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-994

SCHOOL COMMITTEE OF SPRINGFIELD,
PETITIONER,

v.

BOARD OF EDUCATION et al.,
RESPONDENTS.

BRIEF OF RESPONDENTS AUTUMN BRUCE ET AL. (INTERVENERS) IN OPPOSITION TO CERTIORARI

GERALD R. HEGARTY
1200 Main Street
Springfield, Massachusetts 01103
Counsel for the Respondents Autumn Bruce et al.

Of Counsel:
WILLIAM F. MALLOY
135 State Street
Springfield, Massachusetts 01103
ROBERT D. FLEISCHNER
791 State Street
Springfield, Massachusetts 01109

Blanchard Press, Inc., Boston, Mass. — Law Printers

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	4
Argument	
I. The Petition for Certiorari Was Not Filed Within Ninety Days After the Judgment Sought To Be Reviewed	6
II. The Judgment Below Rests on an Adequate Non-Federal Ground	7
III. The Judgment Below Is Clearly Correct	10
Conclusion	13
Appendix A. Final Decree After Rescript of May 15, 1974	14
Appendix B. Motion to Vacate Final Decree	15
Appendix C. Order of August 22, 1974	16
Appendix D. Rescript of November 12, 1974	17
Appendix E. Supreme Judicial Court Docket Entries in the Full Court	18
Appendix F. Constitutional and Statutory Provisions	19
Massachusetts Constitution, Declaration of Rights, Articles 1 and 10	19
Massachusetts General Laws, Chapter 211, Sections 8 and 9	20
Title 28 U.S. Code, Section 1257	21
Title 28 U.S. Code, Section 2101(c)	21

Table of Citations

Cases

	Page
Barksdale v. *Springfield School Committee*, 237 F. Supp. 543 (D. Mass. 1965)	13
Bradley v. *Milliken*, 433 F.2d 897 (CA-6, 1970)	11
Brinkman v. *Gilligan*, (S.D. Ohio E.D. # 72-137, Feb. 7, 1973) *affirmed* 503 F.2d 684 (CA-7, 1974)	11
Buck v. *California*, 343 U.S. 99 (1952)	8
Cole v. *Violette*, 319 U.S. 581 (1943)	7
Dept. of Banking v. *Pink*, 317 U.S. 264 (1942)	7
Durley v. *Mayo*, 351 U.S. 277 (1956)	8
Fox Film Corp. v. *Muller*, 296 U.S. 207 (1935)	8
Indiana Toll Road Comm'n v. *Jankovich*, 244 Ind. 574 (1963)	8
Jankovich v. *Indiana Toll Road Comm'n*, 379 U.S. 487 (1965)	8
Keyes v. *School District Number One, Denver, Colo.*, 303 F. Supp. 289 (D. Colo. 1969)	11
Keyes v. *School District No. 1, Denver, Colo.*, 413 U.S. 189 (1973)	11, 12
Lee v. *Nyquist*, 318 F. Supp. 710 (W.D.N.Y., 1970), *affirmed* 402 U.S. 935 (1971)	12
Market Street R. Co. v. *Comm'n*, 324 U.S. 548 (1945)	7
Martin v. *Evansville Vandenbergh Sch. Corp. of Evansville*, 347 F. Supp. 816 (S.D. Ind., 1972)	11
Milliken v. *Bradley*, 418 U.S. 717 (1974)	12
Morgan v. *Hennigan*, 379 F. Supp. 410 (D. Mass. 1974) *affirmed* —— F.2d —— (CA-1, 1974)	13
NAACP v. *Lansing Board of Education*, 485 F.2d 569 (C.A.-6, 1973)	11

Page

Oliver v. *Kalamazoo Bd. of Ed.*, 346 F. Supp. 766 (W.D. Mich. S.D. 1972) 11

Oliver v. *School Dist. of Kalamazoo*, 448 F.2d 635 (CA-6, 1971) 11

Opinion of the Justices, Mass. Adv. Sh. (1973) 1027, 298 N.E. 2d 840 9

Reitman v. *Mulkey*, 387 U.S. 369 (1967) 12, 13

San Francisco Unified Sch. Dist. v. *Johnson*, 3 Cal. 3d 937 (1971) 12

School Committee of Boston v. *Board of Education*, 352 Mass. 693 (1967), *appeal dismissed*, 389 U.S. 572 (1968) 13

School Committee of Springfield v. *Board of Education*, Mass. Adv. Sh. (1972) 1543, 287 N.E. 2d 438 4

School Committee of Springfield v. *Board of Education*, Mass. Adv. Sh. (1974) 657, 311 N.E. 2d 69 2

Scofield v. *NLRB*, 394 U.S. 423 (1969) 7

Springfield School Committee v. *Barksdale*, 348 F.2d 261 (CA-1, 1965) 13

Universal Adjustment Corp. v. *Midland Bank, Ltd.*, 281 Mass. 303 (1933) 9

Constitutional Provisions

United States Constitution, Fourteenth Amendment 7, 9

Massachusetts Constitution, Declaration of Rights,

Article 1 ..... 3, 7-8

Article 10 ..... 3, 7-8

Federal Statutes

	Page
28 U.S.C., section 1257	3, 7
section 2101(c)	2, 7

Massachusetts Statutes

General Laws,	
Chapter 15, section 1I	3, 4, 5
section 1J	3, 4
section 1K	3
Chapter 71, section 37C	3, 4
section 37D	3, 4, 5
Chapter 76, section 12A	3, 4
Chapter 211, section 8	3, 6-7
section 9	3, 6-7
Acts of 1974, Chapter 636	3, 5, 10, 13

In the
Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-994

SCHOOL COMMITTEE OF SPRINGFIELD,
PETITIONER,

v.

BOARD OF EDUCATION et al.,
RESPONDENTS.

BRIEF OF RESPONDENTS AUTUMN BRUCE ET AL. (INTERVENERS) IN OPPOSITION TO CERTIORARI

This brief is filed in behalf of Autumn Bruce and Marlece Bruce, p/p/a Susann Bruce, Kate H. Crampton, and Gregory E. Crampton, p/p/a Rebekah J. Crampton, Rusherna L. Dumpson, p/p/a Marjorie Dumpson, Susan C. Resnick, and David C. Resnick, p/p/a Barbara Resnick, Charles A. Peters, p/p/a Ronald A. Peters, Susann Bruce, Rebekah J. Crampton, Marjorie Dumpson, Barbara Resnick, and Ronald A. Peters, who are children attending elementary schools in Springfield and their parents. They

were allowed to intervene in this case by the Supreme Judicial Court of Massachusetts in opposition to petitioner's motion to vacate the final decree.

Opinions Below

The opinion of the Supreme Judicial Court of Massachusetts of November 12, 1974, is reported at 319 N.E.2d 427, Mass. Adv. Sh. (1974) 2031. The prior opinion of that court of May 1, 1974, is reported at 311 N.E.2d 69, Mass. Adv. Sh. (1974) 657. An Opinion and Order of the Massachusetts Board of Education dated October 12, 1973 was the basis for this judicial proceeding (opinion below, Petitioner's Appendix p. 6). A subsequent Opinion and Order of the Board was issued in response to Petitioner's Motion to Vacate on August 13, 1974, and is part of the record in this case (opinion below, Pet. App. p. 11, n. 14). Of the foregoing opinions only the Supreme Judicial Court opinion of November 12, 1974, appears in the Appendix to the Petition for Certiorari.

Jurisdiction

The judgment of the Supreme Judicial Court of Massachusetts sought to be reviewed here is an order entered August 22, 1974, denying petitioner's motion to vacate final decree. As indicated in Part I of the Argument in this brief, the petition for certiorari was not filed within ninety days thereafter as required by 28 U.S.C. § 2101 (c).

Questions Presented

1. Whether the filing of the petition for certiorari was timely.

2. Whether this court should review the decision of a state court holding a state statute invalid under both federal and state constitutions.

3. Whether any provision of the United States Constitution requires a state court to vacate its otherwise valid prior final decree, where:

(a) the prior decree affirmed the order of a state administrative agency directed to a local school committee, thereby enforcing a state statutory policy of racially integrating public schools:

(b) after the date of the prior decree a legislative amendment deprived the administrative agency of some of the powers it had exercised in the original order;

(c) the local school committee, immediately upon adoption of the legislative amendment, voted to return to a racially imbalanced school attendance plan; and

(d) the state court concluded that the implementation of that vote would resegregate a school system which had achieved racial balance under the prior decree.

Constitutional and Statutory Provisions Involved

The Massachusetts Racial Imbalance Law as it existed prior to July 26, 1974, appears in General Laws, Chapter 15, §§ 1I, 1J, and 1K, Chapter 71, §§ 37C and 37D, and Chapter 76, § 12A, which are set forth in Petitioner's Appendix, pp. 58-64, except c. 15 § 1K which is not relevant here.

Chapter 636 of the Massachusetts Acts of 1974, amending the Racial Imbalance Law, is set forth in Petitioner's Appendix, pp. 44-58.

Appendix F hereto sets forth the following:

(1) Declaration of Rights of the Massachusetts Consitution, Articles 1 and 10, *infra* pp. 19-20;

(2) Massachusetts General Laws, Chapter 211, §§ 8 and 9, *infra* p. 20; and

(3) 28 U.S.C. §§ 1257 and 2101 (c), *infra* p. 21.

Statement of the Case

In 1965 Massachusetts adopted a Racial Imbalance Law designed to eliminate racial imbalance in the public schools of the Commonwealth. This statute required local school committees in communities with racially imbalanced (more than 50% nonwhite) public schools as determined in an annual census to devise plans to eliminate such imbalance (Mass. Gen. Laws, Ch. 71, § 37D, Pet. App. pp. 61-63). The State Board of Education was given various powers to review such local plans and to enforce the policy of the statute (Mass. Gen. Laws, Ch. 15, § 1I-1J, Ch. 71, § 37C, Pet. App. pp. 58-63).

In the first racial census in 1965 Springfield had six racially imbalanced elementary schools of which five remained continuously imbalanced to June 1974 (opinion below, Pet. App. p. 4).

In the judicial review of an order of the State Board in 1972 the Supreme Judicial Court of Massachusetts ordered the School Committee of Springfield (petitioner here) to adopt short-term measures to racially balance all Springfield schools by September 1973. *School Committee of Springfield* v. *Board of Education,* Mass. Adv. Sh. (1972) 1543, 287 N.E.2d 438. No such plan was adopted or put into effect by the petitioner (opinion below, Pet. App. pp. 5-6).

As a result administrative proceedings before the Board of Education in the summer of 1973 led to the Board's Opinion and Order of October 12, 1973, directing the petitioner to implement a "Task Force" plan for the short term racial balancing of the Springfield schools starting in September 1974 (opinion below, Pet. App. p. 6). The petitioner sought judicial review of this Opinion and Order, resulting in a final decree of May 15, 1974, ordering compliance with the State Board order (opinion

below, Pet. App. pp. 7-8, copy of final decree is Appendix A of this brief).

On July 26, 1974, an amendment to the Racial Imbalance Act, Chapter 636 of the Acts of 1974, was approved by the governor and was made effective immediately (Pet. App. pp. 44-58, opinion below, Pet. App. p. 8). This amendment made the following substantial changes, *inter alia,* in the Racial Imbalance Act:

(1) Local school boards were no longer required to devise plans to eliminate racial imbalance, but merely to provide for the transfer of students whose parents requested a transfer, in the case of white students to a predominantly nonwhite school, and in the case of nonwhite students to a predominantly white school (§ 5, amending G.L. c. 71, § 37D, Pet. App. pp. 48-53, opinion below, Pet. App. pp. 8-9).

(2) The State Board of Education was deprived of its power to order redistricting or transportation as part of a racial balance plan (§ 1, amending G.L. c. 15, § 1I, Pet. App. pp. 44-47, opinion below Pet. App. p. 10).

On August 1, 1974, the petitioner held a meeting at which it voted to direct its staff to take no further action to implement the Task Force plan without the specific approval of the School Committee. It also voted to reopen the Springfield schools on September 4, 1974, with the same grade structure and school organization as existed in June 1974 (opinion below, Pet. Ap. p. 10). These votes were inconsistent with the implementation schedule previously decreed by the Supreme Judicial Court and with the Task Force plan itself, which required a change in the grade structure of every elementary school (opinion below, Pet. App. p. 6, n. 8).

On August 2, 1974, the petitioner filed a motion to vacate the final decree after rescript (opinion below, Pet. App. pp. 10-11, see Appendix B of this brief). The under-

signed petitioned to intervene. A single justice of the Supreme Judicial Court admitted the undersigned as interveners and reserved and reported the motion to vacate to the full court (opinion below, Pet. App. p. 11 and n. 14). After oral argument, the Supreme Judicial Court entered its order on August 22, 1974, denying petitioner's motion (opinion below, Pet. App. p. 11, see also Appendix C of this brief). The court's opinion was issued November 12, 1974.

Argument

I. The Petition for Certiorari Was Not Filed Within Ninety Days After the Judgment Sought To Be Reviewed.

The petitioner seeks review of the denial of its motion to vacate a final decree. Appended hereto are copies of the decree (Appendix A, *infra* p. 14), motion to vacate (Appendix B, *infra* p. 15), order denying motion to vacate (Appendix C, *infra* p. 16), rescript (Appendix D, *infra* p. 17), and docket entries in the full court (Appendix E, *infra* p. 18). It is clear that the order or judgment was entered August 22, 1974, and that no subsequent order or judgment has been entered.

The ninety day period for filing this petition expired on November 20, 1974, well before actual filing on February 10, 1975. This period cannot be measured from the date of the opinion of November 12, 1974, since the opinion contains no order or judgment but rather refers to the prior entry of such order on August 22, 1974 (opinion below, Pet. App. pp. 2, 11). Massachusetts law recognizes the difference between the order or judgment of the Supreme Judicial Court and the opinion, which is not necessarily issued simultaneously. Mass. General Laws,

chapter 211, §§ 8 and 9 (Appendix F hereto). A rescript can include a final judgment for purposes of this court's jurisdiction, *Cole* v. *Violette*, 319 U.S. 581 (1943), but in this case the rescript (Appendix D hereto) manifestly does not contain any order or judgment.

A state court's judgment is final and reviewable when it ends the litigation by fully determining the rights of the parties. *Dept. of Banking* v. *Pink*, 317 U.S. 264, 267 (1942). Judgment is final when it is not subject to further review by a state court. *Ibid* p. 268. The time for filing in this court runs from the date of the appellate court's *order. Ibid* p. 268.

Market Street R. Co. v. *Comm'n*, 324 U.S. 548, 551-552 (1945) holds that judgment is final when the issues are adjudged, litigation determined, the case decided. In the case at bar this happened on August 22, 1974. By the time the opinion was written, the order was being implemented as a final judgment, Springfield schools having opened in September under the Task Force Plan (opinion below, Pet. App. p. 2, n. 3).

The statutory requirement of 28 U.S.C. § 2101 (c) that a petition for certiorari be filed within ninety days of entry of judgment or decree does not mean within ninety days of the appellate court's opinion but rather within ninety days of the entry of the judgment or order. *Scofield* v. *NLRB*, 394 U.S. 423, 427 (1969). This court's jurisdiction under 28 U.S.C. § 1257 is to review final judgments or decrees of state courts, not their opinions.

II. The Judgment Below Rests on an Adequate Non-Federal Ground.

The majority opinion of the Supreme Judicial Court based its denial of petitioner's motion on the equal protection clause of the Fourteenth Amendment and on ar-

ticles 1 and 10 of the Declaration of Rights of the Massachusetts Constitution:

> "[I]n the circumstances of this case, any action taken by either the Legislature or by the school committee of Springfield which would tend to reverse or impede the progress toward the achievement of racial balance in Springfield's schools would constitute a violation of the Fourteenth Amendment to the United States Constitution *and of arts. 1 and 10 of the Declaration of Rights of the Massachusetts Constitution.*" (Pet. App. pp. 14 and 15) (Emphasis added).

It is therefore clear that the invalidity of the relief sought under the Massachusetts Constitution is an independent and sufficient basis for the order of the court below.

It is well settled that this court does not have jurisdiction to review judgments of state courts which rest on independent and adequate state grounds. Where, as here, the judgment is based on both federal and state constitutional grounds, it will not be reviewed by this court. *Jankovich* v. *Indiana Toll Road Comm'n,* 379 U.S. 487, 489-492 (1965); *Fox Film Corp.* v. *Muller,* 296 U.S. 207 (1935). The independent state ground is at least as clearly set forth in the opinion below as in that of the Supreme Court of Indiana in *Jankovich,* 244 Ind. 574 (1963).

Even if there were some ambiguity as to the ground of the decision below, it would be the practice of this court not to review the judgment. *Buck* v. *California,* 343 U.S. 99, 103 (1952) and cases there cited; *Durley* v. *Mayo,* 351 U.S. 277 (1956).

It should be noted that the Massachusetts court has held that the guaranties in its State constitution are *at least* as great as those of the equal protection clause

of the Fourteenth Amendment. *Opinion of the Justices*, Mass. Adv. Sh. (1973) 1027, 1036, 298 N.E.2d 840, 846; *Universal Adjustment Corp.* v. *Midland Bank, Ltd.*, 281 Mass. 303, 320 (1933). It is therefore clear that the State constitution may mandate racial desegregation even where the Fourteenth Amendment does not.

The majority opinion also casts doubt on whether the amendment to the statute was intended to affect existing final decrees (Pet. App. pp. 12-13). There is no reason to believe that the majority of the court would have construed the amendment as requiring vacation of prior final judgments if they had not reached the state and federal constitutional issues. Three judges, in a concurring opinion, do avoid the constitutional questions and construe the statute as not intended to have retroactive effect in this case (Pet. App. p. 25). Such statutory construction constitutes no error of federal law argued by the petitioner either below or in its petition for certiorari. Similarly the general rule that a court of equity may modify a final decree in the light of changed circumstances including a change in statutory law does not mean that it is *required* to make a particular change demanded by a party in a case where the court finds it inequitable to do so, as the concurring judges find here (Pet. App. pp. 26-27.) No rule of federal law have has been called to this court's attention which would require this discretionary power to be exercised in favor of this petitioner in these circumstances. Thus the judgment below must stand, either on the basis of the state constitution, statutory construction, or general equity principles.

III. The Judgment Below Is Clearly Correct.

The Supreme Judicial Court properly found that, in the circumstances present here, a return by the school committee to its former segregated system would constitute

state action deliberately fostering segregation. Although the petitioner reasserts throughout the petition that the public schools of Springfield have never been found to be *de jure* segregated, this contention cannot stand in the light of the opinion below, which obviously rests upon such a finding.

By July 1974 the petitioner had taken steps to implement the court ordered racial balance plan. A preliminary injunction of February 20, 1974, had made an implementation schedule applicable to petitioner (opinion below, Pet. App. p. 7). After final decree, a single justice retained jurisdiction to ensure implementation. (*ibid* p. 8). Implementation proceeded until the beginning of August (*ibid* p. 8). The votes of the petitioner of August 1, 1974, were in effect an attempted rescission of the existing integration plan. The court below said:

> "[I]n so far as the school committee, in reliance on c. 636, attempts to rescind the action it has previously taken toward full implementation of that plan, it would be acting in an unconstitutional manner. We explain these conclusions.
>
> "By July 26, 1974, when c. 636 was enacted, the plans for elimination of the racial imbalance which had for nine years existed in five Springfield elementary schools had finally been made. Substantially every action which was necessary to the implementation of the Task Force plan had already been taken: the more than thirty elementary school districts had been consolidated into six districts; pupil assignments had been completed and notification had been sent to parents; staff assignments and notification thereof had been completed; the safety and transportation plan had been completed; additional vehicles necessary for student transportation had been ordered;

community education programs had been conducted. Thus, by the end of July, through the affirmative acts of the school commitee, Springfield had in fact achieved a racially balanced school system. Essentially all that remained to be done was to put the students into the classrooms.

"In these circumstances any attempt by the Legislature or by the school committee to rescind the present enrollment structure (all elementary schools less than forty per cent nonwhite) and return to the 1973-1974 enrollment structure (five elementary schools between 82% and 95% nonwhite) would constitute resegregation of the previously imbalanced schools, and would thus be an unconstitutional act of de jure segregation." (citations and footnotes omitted) (Pet. App. pp. 14-16).

All prior cases dealing with rescission of racial balancing plans have held the rescission to be an element in finding *de jure* segregation in violation of the Fourteenth Amendment.

Keyes v. *School District Number One, Denver, Colo.*, 303 F. Supp. 289, 295 (D. Colo. 1969)

Bradley v. *Milliken*, 433 F.2d 897, 904 (CA-6, 1970)

Oliver v. *Kalamazoo Bd. of Educ.*, 346 F. Supp. 766, 780 (W.D. Mich. S.D. 1970)

Martin v. *Evansville-Vandenbergh Sch. Corp. of Evansville*, 347 F. Supp. 816, 820 (S.D. Ind. 1972)

Brinkman v. *Gilligan* (S.D. Ohio E.D. #72-137, Feb. 7, 1973)

None of these findings has been disturbed on appeal. See *Keyes*, 413 U.S. 189 (1973), *Oliver*, 448 F.2d 635 (CA-6, 1971), *Brinkman*, 503 F.2d 684 (CA-7, 1974). See also *NAACP* v. *Lansing Board of Education*, 485 F.2d 569 (C.A.-6, 1973).

This court in reviewing *Bradley* upheld the court of appeals' finding that the legislative repeal of a voluntary desegregation plan contributed to increasing segregation. *Milliken* v. *Bradley*, 418 U.S. 717, 738 n. 18 (1974).

In *Keyes* this court likewise relied on findings of *de jure* segregation which (as to two schools) were based entirely on rescission of a voluntary desegregation plan, 413 U.S. at 192, 199 n. 10.

The judgment below is further supported by those cases which have applied the "immediate objective," "ultimate effect," and "historical context" considerations of *Reitman* v. *Mulkey*, 387 U.S. 369, 373, 378-79, 381 (1967) to anti-busing legislation. In *Lee* v. *Nyquist*, 318 F. Supp. 710 (W.D. N.Y. 1970) a three judge federal court held invalid a state statute which limited the authority of appointed local school boards to order racial balancing plans, applying *Reitman*. This court summarily affirmed, 402 U.S. 935. *Reitman* and *Lee* were relied on by the Supreme Court of California in *San Francisco Unified School Dist.* v. *Johnson*, 3 Cal. 3d 937, 958-959 (1971).

In the case at bar, Springfield had at least five segregated elementary schools continuously for ten years. The petitioner's votes of August 1, 1974, in violation of a final decree of the state's highest court evidenced an unquestionable intent to return, as soon as legislation permitted it, to the historic pattern of segregation. This action and the legislation authorizing it constitute state action amounting to racial discrimination.

Prior reported cases provided all the information necessary to find the required elements of *Reitman* in the case at bar, based on the recalcitrance of local school committees to implement the Racial Imbalance Law and the interest of the Legislature in weakening it. These include two Springfield cases (opinion below, Pet. App. p. 2, n. 4), three Boston cases (opinion below, Pet. App. p. 8, n. 11),

two advisory opinions on proposed crippling amendments to the Racial Imbalance Law (*ibid*), and an early challenge to the constitutionality of the law, *School Committee of Boston* v. *Board of Education,* 352 Mass. 693 (1967), appeal dismissed 389 U.S. 572 (1968). While Chapter 636 was pending in the legislature, a United States District Court ordered the Boston school committee to desegregate its schools. *Morgan* v. *Hennigan,* 379 F. Supp. 410 (D. Mass. 1974), affirmed —— F.2d —— (CA-1, 1974). Springfield's history of segregation before the adoption of the Racial Imbalance Law may be found in *Barksdale* v. *Springfield School Committee,* 237 F. Supp. 543, 545-546 (D. Mass. 1965), judgment vacated *sub nom. Springfield School Committee* v. *Barksdale,* 348 F.2d 261 (CA-1, 1965).

Thus, applying either the cases involving rescission of desegregation plans or those following the *Reitman* analysis, the decision below was amply warranted and indeed required. No contrary authority has been produced by the petitioner.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for certiorari should be denied.

Respectfully submitted,

GERALD R. HEGARTY,
Counsel for Autumn Bruce et al., Respondents (Interveners below)

Of Counsel:
WILLIAM F. MALLOY
ROBERT D. FLEISCHNER

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss. No. 73-214 Equity

SCHOOL COMMITTEE OF THE CITY OF SPRINGFIELD

v.

THE BOARD OF EDUCATION OF THE COMMONWEALTH OF MASSACHUSETTS

FINAL DECREE AFTER RESCRIPT

This case came on to be further heard at this sitting following the rescript of the Supreme Judicial Court and was argued by counsel; and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED and DECREED:

1. That the "Petition for Declaratory Judgment, Injunctive Relief and Judicial Review" brought by the petitioner School Committee of Springfield be and hereby is dismissed.

2. That the counterclaim brought by the Board of Education is granted in that the Opinion and Order of the Board is affirmed and the Committee is ordered to make timely compliance with that Opinion and Order and the schedule for implementation of the Task Force plan.

By the Court (BRAUCHER, J.)

(s) JOHN E. POWERS, *Clerk*

Entered: May 15, 1974

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss. No. 73-214 Equity

SCHOOL COMMITTEE OF THE CITY OF SPRINGFIELD
v.
THE BOARD OF EDUCATION OF THE
COMMONWEALTH OF MASSACHUSETTS

MOTION TO VACATE

The Springfield School Committee moves to vacate the order entered on May 15, 1974 by this Court that the School Committee of the City of Springfield make timely compliance with the Opinion and Order of the Board of Education of the Commonwealth of Massachusetts and the schedule for implementation of the Task Force Plan. On July 26, 1974, Chapter 636 of the Acts of 1974 was enacted into law. Chapter 636 amends Chapter 15, Chapter 71 and Chapter 76 of the Massachusetts General Laws, which Chapters are the legal basis and legal authority for said order of this Court and for said Opinion and Order.

Wherefore, the School Committee of the City of Springfield moves that this case be ordered remanded to the Board of Education of the Commonwealth of Massachusetts and that the parties be ordered to comply forthwith with the said Chapter 636.

SCHOOL COMMITTEE OF THE
CITY OF SPRINGFIELD
By _____
WILLIAM C. FLANAGAN
City Solicitor

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss. No. 43

SCHOOL COMMITTEE OF THE CITY OF SPRINGFIELD
v.
THE BOARD OF EDUCATION OF THE
COMMONWEALTH OF MASSACHUSETTS
(and intervenor).

ORDER.

The Springfield School Committee's motion to vacate the order dated May 15, 1974, entered after rescript, is denied; all orders and decrees entered in this case by the Court or any Justice thereof remain in full force and effect. The opinion, or opinions, of the Court will follow.

(By the Court)

(s) WILLIAM M. CLORAN
WILLIAM M. CLORAN
Assistant Clerk.

August 22, 1974.

APPENDIX D

Rescript

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

At Boston, November 12, 1974.

IN THE CASE OF

SCHOOL COMMITTEE OF SPRINGFIELD

v.

BOARD OF EDUCATION & others

pending in the Supreme Judicial Court for the County of Suffolk

ORDERED, that the following entry be made in the docket; viz.,—

See order entered on August 22, 1974.

BY THE COURT,
FREDERICK J. QUINLAN, Clerk.

November 12, 1974.

Brief statement of the grounds and reasons of the decision: See opinion on file.

A true copy,
Attest:
(s) FREDERICK J. QUINLAN, Clerk.

APPENDIX E

Supreme Judicial Court Docket Entries
In The Full Court

Civil No. 43

SCHOOL COMMITTEE OF THE CITY OF SPRINGFIELD
v.
THE BOARD OF EDUCATION OF THE
COMMONWEALTH OF MASSACHUSETTS

Counsel for Plaintiff
William C. Flanagan, City Sol.
Thomas A. Kenefick, III
Counsel for Defendant
Harvey F. Rowe, Jr., A.A.G.
For Intervener:
Gerald R. Hegarty
William F. Malloy
Robert D. Fleischner

SJC	Entered August 19, 1974
Suffolk	
County	Argued August 22, 1974
Reservation	August 22, 1974. Order of the Court.
and	November 12, 1974. See order entered on
Report	August 22, 1974.
	Rescript November 12, 1974.
	Reasons as on file.
	Notice sent to counsel.

APPENDIX F

Constitutional and Statutory Provisions

(1) DECLARATION OF RIGHTS OF THE MASSACHUSETTS CONSTITUTION; ARTICLES 1 and 10

ARTICLE 1:

All men are born free and equal and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

ARTICLE 10:

Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by

a county, city or town, of more land and property than are needed for the actual construction of such highway or street; provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

(2) MASSACHUSETTS GENERAL LAWS, CHAPTER 211, §§ 8 and 9

§ 8. Judgment or Rescript after Decision.

The full court shall, as soon as may be after the decision of the questions submitted to it, make and enter a proper order, direction or judgment for the further disposition of the case, or cause a rescript, containing a brief statement of the grounds and reasons of the decision, to be filed therein; it may remand the record to the trial court to carry such judgment into effect, or instead thereof, the full court may order a new trial or further proceedings at the bar of the supreme judicial court, or order sentence to be awarded or execution issued in said court.

§ 9. Contents of Rescripts, etc.

The records and rescripts which are made after the decision of questions of law shall contain a brief statement of the reasons therefor; and if no further opinion is written within sixty days, the reporter shall publish the case with the opinion contained in such record or rescript.

(3) TITLE 28, UNITED STATES CODE, §§ 1257 and 2101(c)

§ 1257.

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

§ 2101 (c).

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.